

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
GALVESTON DIVISION

KALEEYSE MARTINEZ, §  
INDIVIDUALLY AND AS §  
REPRESENTATIVE OF THE §  
ESTATE §  
OF EUGENIO ESPINOZA §  
MARTINEZ, DECEASED §  
*Plaintiff*, § CIVIL ACTION NO. 3:21-cv-258  
§  
v. §  
§  
TEXAS DEPARTMENT OF §  
CRIMINAL JUSTICE, ET AL., §  
*Defendants.* §

DEFENDANTS' NOTICE OF REMOVAL

**EXHIBIT B**

**ENGVALL & YORK, LLP**  
**ATTORNEYS AT LAW**

1811 BERING DRIVE, SUITE 210  
HOUSTON, TEXAS 77057  
TELEPHONE: (713) 787-6700  
FACSIMILE: (713) 787-0070

[www.engvalltxlaw.com](http://www.engvalltxlaw.com)

8620 N. NEW BRAUNFELS AVE., SUITE 540  
SAN ANTONIO, TEXAS 78217  
TELEPHONE: (210) 570-5250  
FACSIMILE: (210) 855-3934

**JOHN ENGVALL, JR.**

**jengvall@engvalltxlaw.com**

July 26, 2021

**Via E-Service**

Ms. Rhonda Barchak  
BRAZORIA COUNTY DISTRICT CLERK  
111 E. Locust Street, Suite 500  
Angleton, Texas 77515  
**ATTN: Lauren**

re: Cause No. 113131-CV; *Martinez v. Texas Department of Criminal Justice*; In the 149<sup>th</sup> Judicial District Court of Brazoria County, Texas

Dear Lauren:

Per your request, in connection with the civil process request filed earlier today in the above referenced matter, below is a listing of the fees submitted related to preparation of the requested Citations:

Citations	(6 x \$8.00)	\$48.00
Service Copies	(90 x \$ 0.10)	\$ 7.00

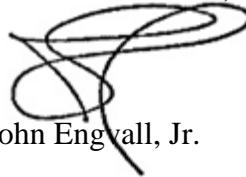
**TOTAL FEES PAID \$57.00**

Once the Citations have been issued, please forward them by mail to my Houston office address: 1811 Bering Dr., Suite 210, Houston, Texas 77057.

Thank you for your assistance.

Sincerely,

**ENGVALL & YORK, LLP**



John Engvall, Jr.

JE/mm

111 E. Locust, Ste. 500  
Angleton, TX 77515



[www.brazoriacountytexas.gov](http://www.brazoriacountytexas.gov)

979-864-1316  
979-388-1316  
281-756-1316



**RHONDA BARCHAK  
DISTRICT CLERK  
BRAZORIA COUNTY**

July 27, 2021

John Engvall Jr.  
Engvall & York LLP  
1811 Bering Drive Suite 210  
Houston TX 77057

RE: Cause No. 113131-CV in the 149th District Court

Style: Kaleeyse Martinez, Individually And As Representative Of The Estate Of Eugeno Espinoza Martinez, Deceased Vs. Texas Department Of Criminal Justice, Bruce Armstrong, University Of Texas Medical Branch- Correctional Managed Care, Adaobi C. Nwafor, Fnp-c, And David W. Mbugua, Fnp-c

Dear Sir:

Please find enclosed the six (6) Citations which you requested on July 26, 2021. If we can be of further assistance, please do not hesitate to contact our office.

Sincerely,  
**RHONDA BARCHAK, District Clerk**

Alyssa Cook  
Alyssa Cook, Deputy

Enclosure  
CC: file

**FILE COPY**

Cause No. 113131-CV  
149th District CourtTO: **David W. Mbugua, FNP-C**

Defendant

## NOTICE:

You have been sued. You may employ an attorney. If you or your Attorney do not file a written answer with the Clerk who issued this Citation by 10:00 a.m. on the Monday next following the expiration of 20 days after you were served this **Citation and Plaintiff's Original Petition** a Default Judgment may be taken against you. In addition to filing a written answer with the clerk, you may be required to make initial disclosures to the other parties of this suit. These disclosures generally must be made no later than 30 days after you file your answer with the clerk. Find out more at [TexasLawHelp.org](http://TexasLawHelp.org). If filing Pro Se, said answer may be filed by mailing same to: Brazoria County District Clerk's office, 111 E. Locust, Suite 500, Angleton, TX 77515-4678 or by bringing said answer in person to the aforementioned address.

The case is presently pending before the **149th District Court** of Brazoria County sitting in Angleton, Texas, and was filed on the **7th day of June, 2021**. It bears Cause No. **113131-CV** and Styled:

**Kaleeyse Martinez, Individually and as Representative of the Estate of Eugeno Espinoza Martinez,  
Deceased**

vs.

**Texas Department of Criminal Justice, Bruce Armstrong, University of Texas Medical Branch-  
Correctional Managed Care, Adaobi C. Nwafor, FNP-C, and David W. Mbugua, FNP-C**

The name and address of the Attorney filing this action (or Party, if Pro se) is, **John Engvall, Jr.,  
Engvall & York LLP, 1811 Bering Drive, Suite 210, Houston, TX 77057**.

The nature of the demands of said Plaintiff is shown by a true and correct copy of Plaintiff's Petition accompanying this Citation.

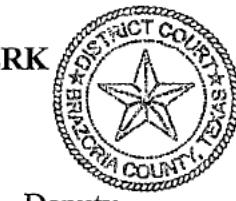
Issued under my hand and the seal of said Court, at Angleton, Texas, on the **27th day of July, 2021**.

RHONDA BARCHAK, DISTRICT CLERK  
Brazoria County, Texas

By



Alyssa Cook



Deputy

**FILE COPY**

## Return of Service

Cause No. 113131-CV 149th District Court

KALEEYSE MARTINEZ, INDIVIDUALLY AND AS REPRESENTATIVE OF THE ESTATE OF EUGENO ESPINOZA  
MARTINEZ, DECEASED  
VS.

TEXAS DEPARTMENT OF CRIMINAL JUSTICE, BRUCE ARMSTRONG, UNIVERSITY OF TEXAS MEDICAL BRANCH-CORRECTIONAL MANAGED CARE, ADAOBI C. NWAFOR, FNP-C, AND DAVID W. MBUGUA, FNP-C

David W. Mbugua, FNP-C

Came to hand on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ at \_\_\_\_\_, o'clock \_\_\_\_ .m., and executed in \_\_\_\_\_ County, Texas by delivering to each of the within named parties in person, a true copy of this Citation with the date of delivery endorsed thereon, together with the accompanying copy of the Plaintiff's Original Petition at the following times and places, to-wit:

NAME DATE TIME PLACE, COURSE, AND DISTANCE FROM COURTHOUSE MILEAGE

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and not executed as to (NAME) \_\_\_\_\_

and the cause or failure to execute this process is for the following reason: \_\_\_\_\_

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The diligence used in finding said (NAME) being: \_\_\_\_\_

## FEES:

Serving Citation and Copy	\$ _____	Officer
Mileage: _____ miles @ \$ _____ per mile	\$ _____	County, Texas
Total	\$ _____	Deputy/Authorized Person

COMPLETE IF YOU ARE A PERSON OTHER THAN A SHERIFF, CONSTABLE, OR CLERK OF THE COURT.

In accordance with Rule 107: The officer or authorized person who serves, or attempts to serve, a citation shall sign the return. The return must either be verified or be signed under penalty of perjury. A return signed under penalty of perjury must contain the statement below in substantially the following form:

"My name is \_\_\_\_\_, my date of birth is \_\_\_\_\_, and my  
(First, Middle, Last)  
address is \_\_\_\_\_  
(Street, City, State, Zip Code, Country)

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

Executed in \_\_\_\_\_ County, State of \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

---

Declarant/Authorized Process Server

---

(Id No. and expiration of certification)

Cause No. 113131-CV  
149th District Court

TO: Adaobi C. Nwafor, FNP-C

Defendant

## NOTICE:

You have been sued. You may employ an attorney. If you or your Attorney do not file a written answer with the Clerk who issued this Citation by 10:00 a.m. on the Monday next following the expiration of 20 days after you were served this **Citation** and **Plaintiff's Original Petition** a Default Judgment may be taken against you. In addition to filing a written answer with the clerk, you may be required to make initial disclosures to the other parties of this suit. These disclosures generally must be made no later than 30 days after you file your answer with the clerk. Find out more at [TexasLawHelp.org](http://TexasLawHelp.org). If filing Pro Se, said answer may be filed by mailing same to: Brazoria County District Clerk's office, 111 E. Locust, Suite 500, Angleton, TX 77515-4678 or by bringing said answer in person to the aforementioned address.

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**Kaleeyse Martinez, Individually and as Representative of the Estate of Eugeno Espinoza Martinez,  
Deceased**

vs.

**Texas Department of Criminal Justice, Bruce Armstrong, University of Texas Medical Branch-  
Correctional Managed Care, Adaobi C. Nwafor, FNP-C, and David W. Mbugua, FNP-C**

The name and address of the Attorney filing this action (or Party, if Pro se) is, **John Engvall, Jr.,  
Engvall & York LLP, 1811 Bering Drive, Suite 210, Houston, TX 77057**.

The nature of the demands of said Plaintiff is shown by a true and correct copy of Plaintiff's Petition accompanying this Citation.

Issued under my hand and the seal of said Court, at Angleton, Texas, on the **27th day of July, 2021**.

RHONDA BARCHAK, DISTRICT CLERK  
Brazoria County, Texas



By Alyssa Cook Deputy  
Alyssa Cook

**FILE COPY**

## Return of Service

Cause No. 113131-CV 149th District Court

KALEEYSE MARTINEZ, INDIVIDUALLY AND AS REPRESENTATIVE OF THE ESTATE OF EUGENO ESPINOZA  
MARTINEZ, DECEASED

VS.

TEXAS DEPARTMENT OF CRIMINAL JUSTICE, BRUCE ARMSTRONG, UNIVERSITY OF TEXAS MEDICAL BRANCH-CORRECTIONAL MANAGED CARE, ADAOBI C. NWAFOR, FNP-C, AND DAVID W. MBUGUA, FNP-C

Adaobi C. Nwafor, FNP-C

Came to hand on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ at \_\_\_\_\_, o'clock \_\_\_\_\_.m., and executed in \_\_\_\_\_ County, Texas by delivering to each of the within named parties in person, a true copy of this Citation with the date of delivery endorsed thereon, together with the accompanying copy of the Plaintiff's Original Petition at the following times and places, to-wit:

NAME DATE TIME PLACE, COURSE, AND DISTANCE FROM COURTHOUSE MILEAGE

---



---



---

and not executed as to (NAME) \_\_\_\_\_

and the cause or failure to execute this process is for the following reason: \_\_\_\_\_

The diligence used in finding said (NAME) being: \_\_\_\_\_

## FEES:

Serving Citation and Copy	\$ _____	_____	Officer
Mileage: _____ miles @ \$ _____ per mile	\$ _____	_____	County, Texas
Total	\$ _____		

Deputy/Authorized Person

COMPLETE IF YOU ARE A PERSON OTHER THAN A SHERIFF, CONSTABLE, OR CLERK OF THE COURT.

In accordance with Rule 107: The officer or authorized person who serves, or attempts to serve, a citation shall sign the return. The return must either be verified or be signed under penalty of perjury. A return signed under penalty of perjury must contain the statement below in substantially the following form:

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Executed in \_\_\_\_\_ County, State of \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Declarant/Authorized Process Server

(Id No. and expiration of certification)

RETURN OF SERVICE

CAUSE NO. 113131-CV 149th District Court

KALEEYSE MARTINEZ, INDIVIDUALLY AND AS REPRESENTATIVE OF THE ESTATE OF EUGENO ESPINOZA  
MARTINEZ, DECEASED  
VS.

TEXAS DEPARTMENT OF CRIMINAL JUSTICE, BRUCE ARMSTRONG, UNIVERSITY OF TEXAS MEDICAL BRANCH-CORRECTIONAL MANAGED CARE, ADAOBI C. NWAFOR, FNP-C, AND DAVID W. MBUGUA, FNP-C

Texas Department of Criminal Justice  
By serving its Registered Agent  
Ken Paxton, Attorney General  
300 W. 15th Street  
Austin, TX 78701

Came to hand on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ at \_\_\_\_\_, o'clock \_\_\_\_\_.m., and executed in \_\_\_\_\_ County, Texas by delivering to each of the within named parties in person, a true copy of this CITATION with the date of delivery endorsed thereon, together with the accompanying copy of the Plaintiff's Original Petition at the following times and places, to-wit:

NAME	DATE	TIME	PLACE, COURSE, AND DISTANCE FROM COURTHOUSE	MILEAGE

and not executed as to (NAME) \_\_\_\_\_

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The diligence used in finding said (NAME) being: \_\_\_\_\_

FEES:  
Serving Citation and Copy \$ \_\_\_\_\_ Officer \_\_\_\_\_  
Mileage: \_\_\_\_\_ miles @ \$ \_\_\_\_\_ per mile \$ \_\_\_\_\_ County, Texas  
Total \$ \_\_\_\_\_  
Deputy/Authorized Person \_\_\_\_\_

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(First, Middle, Last)  
address is \_\_\_\_\_  
(Street, City, State, Zip Code, Country)

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

Executed in \_\_\_\_\_ County, State of \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Declarant/Authorized Process Server

\_\_\_\_\_  
(Id No. and expiration of certification)

**CAUSE NO. 113131-CV  
149th District Court**

THE STATE OF TEXAS

CITATION

TO: **University of Texas Medical Branch – Correctional  
Managed Care  
By serving its Registered Agent  
Maria L. Gonzalez  
301 University Blvd., Rt. 0985  
Galveston, TX 77555**

Defendant

NOTICE:

You have been sued. You may employ an attorney. If you or your attorney does not file a written answer with the Clerk who issued this Citation by 10:00 a.m. on the Monday next following the expiration of 20 days after you were served this **Citation** and **Plaintiff's Original Petition** a Default Judgment may be taken against you. In addition to filing a written answer with the clerk, you may be required to make initial disclosures to the other parties of this suit. These disclosures generally must be made no later than 30 days after you file your answer with the clerk. Find out more at [TexasLawHelp.org](http://TexasLawHelp.org). If filing Pro se, said answer may be filed by mailing same to: Brazoria County District Clerk's office, 111 E. Locust, Suite 500, Angleton, TX 77515-4678 or by bringing said answer in person to the aforementioned address.

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**Kaleeyse Martinez, Individually and as Representative of the Estate of Eugeno Espinoza Martinez,  
Deceased**

vs.

**Texas Department of Criminal Justice, Bruce Armstrong, University of Texas Medical Branch-  
Correctional Managed Care, Adaobi C. Nwafor, FNP-C, and David W. Mbugua, FNP-C**

The name and address of the Attorney filing this action (or Party, if Pro Se) is **John Engvall, Jr.,  
Engvall & York LLP, 1811 Bering Drive, Suite 210, Houston, TX 77057**.

The nature of the demands of said Plaintiff is shown by a true and correct copy of Plaintiff's Petition accompanying this Citation.

Issued under my hand and the seal of said Court, at Angleton, Texas, on the **27th day of July, 2021**.

**RHONDA BARCHAK, DISTRICT CLERK  
Brazoria County, Texas**



By Alyssa Cook, Deputy

Alyssa Cook

**FILE COPY**

Service I.D. No. 207944  
RETURN OF SERVICE

CAUSE NO. 113131-CV 149th District Court

KALEEYSE MARTINEZ, INDIVIDUALLY AND AS REPRESENTATIVE OF THE ESTATE OF EUGENO ESPINOZA  
MARTINEZ, DECEASED  
VS.

TEXAS DEPARTMENT OF CRIMINAL JUSTICE, BRUCE ARMSTRONG, UNIVERSITY OF TEXAS MEDICAL BRANCH-CORRECTIONAL MANAGED CARE, ADAOBI C. NWAFOR, FNP-C, AND DAVID W. MBUGUA, FNP-C

University of Texas Medical Branch – Correctional  
Managed Care  
By serving its Registered Agent  
Maria L. Gonzalez  
301 University Blvd., Rt. 0985  
Galveston, TX 77555

Came to hand on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ at \_\_\_\_\_, o'clock \_\_\_\_\_.m., and executed in \_\_\_\_\_ County, Texas by delivering to each of the within named parties in person, a true copy of this CITATION with the date of delivery endorsed thereon, together with the accompanying copy of the Plaintiff's Original Petition at the following times and places, to-wit:

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and the cause or failure to execute this process is for the following reason: \_\_\_\_\_

The diligence used in finding said (NAME) being: \_\_\_\_\_

## FEES:

Serving Citation and Copy	\$ _____	Officer
Mileage: _____ miles @ \$ _____ per mile	\$ _____	County, Texas
Total	\$ _____	Deputy/Authorized Person

COMPLETE IF YOU ARE A PERSON OTHER THAN A SHERIFF, CONSTABLE, OR CLERK OF THE COURT.

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(Street, City, State, Zip Code, Country)

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Executed in \_\_\_\_\_ County, State of \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Declarant/Authorized Process Server

\_\_\_\_\_  
(Id No. and expiration of certification)

## CIVIL CASE INFORMATION SHEET

113131-CV

CAUSE NUMBER (FOR CLERK USE ONLY):

COURT (FOR CLERK USE ONLY):

STYLED KALEEYSE MARTINEZ, INDIV. AND AS REP. OF ESTATE OF EUGENIO MARTINEZ v. Tx

(e.g., John Smith v. All American Insurance Co; In re Mary Ann Jones; In the Matter of the Estate of George Jackson)

A civil case information sheet must be completed and submitted when an original petition or application is filed to initiate a new civil, family law, probate, or mental health case or when a post-judgment petition for modification or motion for enforcement is filed in a family law case. The information should be the best available at the time of filing.

DEPT. OF CRIM. JUSTICE ET AL.

1. Contact information for person completing case information sheet:		Names of parties in case:	Person or entity completing sheet is:
Name: <u>JOHN ENGVALL, JR</u>	Email: <u>jengvall@engvalltxlaw.com</u>	Plaintiff(s)/Petitioner(s): <u>KALEEYSE MARTINEZ</u>	<input type="checkbox"/> Attorney for Plaintiff/Petitioner <input type="checkbox"/> Pro Se Plaintiff/Petitioner <input type="checkbox"/> Title IV-D Agency <input type="checkbox"/> Other: _____
Address: <u>1811 Bering Dr.</u> <u>Ste 210</u>	Telephone: <u>713-787-6700</u>	Defendant(s)/Respondent(s): <u>TEXAS DEPT. OF CRIM.</u> <u>JUSTICE ET. AL.</u>	Additional Parties in Child Support Case: Custodial Parent: _____ Non-Custodial Parent: _____ Presumed Father: _____
City/State/Zip: <u>Houston, Tx 77057</u>	Fax: <u>713-787-0070</u>	State Bar No: <u>00628975</u>	[Attach additional page as necessary to list all parties]

## 2. Indicate case type, or identify the most important issue in the case (select only 1):

Civil			Family Law	
Contract	Injury or Damage	Real Property	Marriage Relationship	Post-judgment Actions (non-Title IV-D)
<input type="checkbox"/> Debt/Contract <input type="checkbox"/> Consumer/DTPA <input type="checkbox"/> Debt/Contract <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Other Debt/Contract:  <input type="checkbox"/> Foreclosure <input type="checkbox"/> Home Equity—Expedited <input type="checkbox"/> Other Foreclosure <input type="checkbox"/> Franchise <input type="checkbox"/> Insurance <input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Non-Competition <input type="checkbox"/> Partnership <input type="checkbox"/> Other Contract:  <input type="checkbox"/> Employment <input type="checkbox"/> Discrimination <input type="checkbox"/> Retaliation <input type="checkbox"/> Termination <input type="checkbox"/> Workers' Compensation <input type="checkbox"/> Other Employment:  <input type="checkbox"/> Tax <input type="checkbox"/> Tax Appraisal <input type="checkbox"/> Tax Delinquency <input type="checkbox"/> Other Tax	<input type="checkbox"/> Assault/Battery <input type="checkbox"/> Construction <input type="checkbox"/> Defamation <input type="checkbox"/> Malpractice <input type="checkbox"/> Accounting <input type="checkbox"/> Legal <input type="checkbox"/> Medical <input type="checkbox"/> Other Professional Liability  <input type="checkbox"/> Motor Vehicle Accident <input type="checkbox"/> Premises <input type="checkbox"/> Product Liability <input type="checkbox"/> Asbestos/Silica <input type="checkbox"/> Other Product Liability List Product:  <input type="checkbox"/> Other Injury or Damage: _____	<input type="checkbox"/> Eminent Domain/Condemnation <input type="checkbox"/> Partition <input type="checkbox"/> Quiet Title <input type="checkbox"/> Trespass to Try Title <input type="checkbox"/> Other Property: _____	<input type="checkbox"/> Annulment <input type="checkbox"/> Declare Marriage Void <input type="checkbox"/> Divorce <input type="checkbox"/> With Children <input type="checkbox"/> No Children	<input type="checkbox"/> Enforcement <input type="checkbox"/> Modification—Custody <input type="checkbox"/> Modification—Other  <input type="checkbox"/> Title IV-D <input type="checkbox"/> Enforcement/Modification <input type="checkbox"/> Paternity <input type="checkbox"/> Reciprocals (UIFSA) <input type="checkbox"/> Support Order
		<input type="checkbox"/> Related to Criminal Matters <input type="checkbox"/> Expunction <input type="checkbox"/> Judgment Nisi <input type="checkbox"/> Non-Disclosure <input type="checkbox"/> Seizure/Forfeiture <input type="checkbox"/> Writ of Habeas Corpus—Pre-indictment <input type="checkbox"/> Other: _____	<input type="checkbox"/> Other Family Law <input type="checkbox"/> Enforce Foreign Judgment <input type="checkbox"/> Habeas Corpus <input type="checkbox"/> Name Change <input type="checkbox"/> Protective Order <input type="checkbox"/> Removal of Disabilities of Minority <input type="checkbox"/> Other: _____	<input type="checkbox"/> Parent-Child Relationship <input type="checkbox"/> Adoption/Adoption with Termination <input type="checkbox"/> Child Protection <input type="checkbox"/> Child Support <input type="checkbox"/> Custody or Visitation <input type="checkbox"/> Gestational Parenting <input type="checkbox"/> Grandparent Access <input type="checkbox"/> Parentage/Paternity <input type="checkbox"/> Termination of Parental Rights <input type="checkbox"/> Other Parent-Child: _____
			Filed for Record 6/7/2021 4:51 PM Rhonda Barchak, District Clerk Brazoria County, Texas 113131-CV Sunnye Wingo, Deputy	

## 3. Indicate procedure or remedy, if applicable (may select more than 1):

<input type="checkbox"/> Appeal from Municipal or Justice Court <input type="checkbox"/> Arbitration-related <input type="checkbox"/> Attachment <input type="checkbox"/> Bill of Review <input type="checkbox"/> Certiorari <input type="checkbox"/> Class Action	<input type="checkbox"/> Declaratory Judgment <input type="checkbox"/> Garnishment <input type="checkbox"/> Interpleader <input type="checkbox"/> License <input type="checkbox"/> Mandamus <input type="checkbox"/> Post-judgment	<input type="checkbox"/> Prejudgment Remedy <input type="checkbox"/> Protective Order <input type="checkbox"/> Receiver <input type="checkbox"/> Sequestration <input type="checkbox"/> Temporary Restraining Order/Injunction <input type="checkbox"/> Turnover
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## 4. Indicate damages sought (do not select if it is a family law case):

<input type="checkbox"/> Less than \$100,000, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees <input type="checkbox"/> Less than \$100,000 and non-monetary relief <input type="checkbox"/> Over \$100,000 but not more than \$200,000 <input type="checkbox"/> Over \$200,000 but not more than \$1,000,000 <input checked="" type="checkbox"/> Over \$1,000,000
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Filed for Record  
6/7/2021 4:51 PM  
Rhonda Barchak, District Clerk  
Brazoria County, Texas  
113131-CV  
Sunnye Wingo, Deputy

113131-CV

CAUSE NO. \_\_\_\_\_

KALEEYSE MARTINEZ, Individually  
and as REPRESENTATIVE OF THE  
ESTATE OF EUGENIO ESPINOZA  
MARTINEZ, Deceased

V.

TEXAS DEPARTMENT OF  
CRIMINAL JUSTICE, BRUCE  
ARMSTRONG, UNIVERSITY OF  
TEXAS MEDICAL BRANCH-  
CORRECTIONAL MANAGED CARE,  
ADAObI C. NWAFOR, FNP-C, and  
DAVID W. MBUGUA, FNP-C

IN THE DISTRICT COURT OF

BRAZORIA COUNTY, TEXAS

JUDICIAL DISTRICT

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**PLAINTIFF'S ORIGINAL PETITION**

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TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Plaintiff herein KALEEYSE MARTINEZ, Individually and as Representative of the Estate of EUGENIO ESPINOZA MARTINEZ, Deceased ("Plaintiff") and brings this action against TEXAS DEPARTMENT OF CRIMINAL JUSTICE ("TDCJ"), BRUCE ARMSTRONG ("Armstrong"), UNIVERSITY OF TEXAS MEDICAL BRANCH-CORRECTIONAL MANAGED CARE, ADAObI C. NWAFOR, FNP-C ("Nwafor"), and DAVID W. MBUGUA, FNP-C ("Mbugua") and, in support thereof, would respectfully show the Court as follows:

**I.**  
**DISCOVERY CONTROL PLAN LEVEL**

Discovery in this case is being conducted under Level 3, pursuant to Rule 190 of the Texas Rules of Civil Procedure.

**II.**  
**PARTIES**

1. Plaintiff KALEEYSE MARTINEZ is a resident and citizen of the State of Texas. She brings this wrongful death cause of action on behalf of herself and as Representative (and sole heir) of the Estate of her biological father, EUGENIO ESPINOZA MARTINEZ, Deceased (“Decedent”).
2. Decedent EUGENIO ESPINOZA MARTINEZ was a resident and citizen of the State of Texas, and was the biological father of Plaintiff Kaleeyse Martinez.
3. Defendant TEXAS DEPARTMENT OF CRIMINAL JUSTICE may be served with process by serving Ken Paxton, Office of the Attorney General, 300 W. 15th Street, Austin, Texas 78701 and Bryan Collier, Executive Director of TDCJ, Price Daniel Building, 209 W. 14th Street, 5th Floor, Austin, Texas 78701.
4. Defendant BRUCE ARMSTRONG is the warden of the TDC Darrington Unit and is a resident and citizen of the State of Texas who may be served with process at 59 Darrington Road, Rosharon, Texas 77583.
5. Defendant UNIVERSITY OF TEXAS MEDICAL BRANCH-CORRECTIONAL MANAGED CARE may be served with process through its registered agent Maria L. Gonzalez, The University of Texas Medical Branch at Galveston, 301 University Blvd., Rt. 0985, Galveston, Texas 77555.
6. Defendant ADAOBI C. NWAFOR, FNP-C is a resident and citizen of the State of Texas who may be served with process at
7. Defendant DAVID W. MBUGUA, FNP-C is a resident and citizen of the State of Texas who may be served with process at

**III.**  
**JURISDICTION AND VENUE**

8. 42 U.S.C. §1983 and 42 U.S.C. §1988 provide jurisdiction over Plaintiff's constitutional claims for redress, which are conferred on this Court by 28 U.S.C. §1343(a)(3).

9. This Court also has pendant jurisdiction over all other claims asserted under the laws of the State of Texas, pursuant to 28 U.S.C. §1337(a) and TEX. CIV. PRAC. & REM. CODE Chapter 107 and Chapter 74.

10. Venue is proper in Brazoria County, Texas, because Brazoria County is where the acts and omissions that caused the death of Mr. Martinez occurred and that form the bases of the wrongful death claim, survival claim, and all other claims stated in this Petition.

**IV.**  
**DUTY AND APPLICABLE LAW**

11. Decedent was subjected to cruel and unusual punishment, a violation of his rights guaranteed to him by the Eighth Amendment of the United States Constitution.

12. Plaintiff commences this action pursuant to 42 U.S.C. §1983 which provides, in relevant part, for redress for every person within the jurisdiction of the United States for the deprivation, under color of statute, ordinance, regulation, custom or usage secured by the Constitution and laws of the United States.

13. Defendants deprived Decedent of necessary medical care and treatment, causing him days of pain and suffering and ultimately his death, and were acting under the color of law and are liable under 42 U.S.C. §1983.

**V.**  
**BACKGROUND**

14. Decedent Eugenio Espinoza Martinez was assigned to the Clarence N. Stevenson Unit located in Cuero, DeWitt County, Texas, and while there, received medical care related to his

Diabetes Mellitus Type II and Hypertension. During his time served at the Stevenson Unit, Decedent received his regularly scheduled medications and his health remained stable.

15. On or about January 7, 2019, Decedent was transferred to the Darrington Unit located in Rosharon, Brazoria County, Texas. The transfer was made under the guise of his need for 24-hour medical care for his medical conditions. However, Decedent's care was reduced while at the Darrington Unit, including the failure of the prison personnel to administer his regular and necessary medications. Additionally, medical and non-medical personnel at Darrington Unit continued to ignore Decedent's pleas for help, medical treatment, and transfer for hospital treatment.

16. On June 4, 2019, Decedent was having difficulty breathing and was unable to get up from his bunk without help due to severe back pain. He asked that the dorm officer be notified of his need for medical attention. Decedent was transferred via stretcher to the infirmary; however, his breathing issues were not addressed at that time. Medical personnel assumed Defendant was suffering from anxiety and refused to transport him to the hospital. He was returned to his dorm via a walker.

17. On June 6, 2019, after Decedent's continued complaints related to his breathing, two persons from the infirmary came to Decedent's bunk with a stretcher. The infirmary personnel yelled at Decedent to get up and get himself onto the stretcher, or they would leave, and he would have to walk himself to the infirmary. Decedent informed the infirmary personnel that he was unable to get up due to his back pain and that he was having a hard time breathing. He was finally given assistance onto the stretcher and was taken to the infirmary. *Later that morning, when trying to maneuver back to his dorm area with a walker, Decedent was sweating uncontrollably and struggling to breathe. He collapsed to the floor. When officers approached him, they called for medical who came with a wheelchair. However, when the male and female medical*

*personnel arrived with a wheelchair, they stood over him laughing and instructed him to get up and into the wheelchair. Decedent begged infirmary personnel to send him to the hospital due to his labored breathing, but transport was yet again refused, and he was returned to his dorm a short time later.*

18. On June 7, 2019, the dorm officer was notified by another inmate that Decedent was ill and needed medical attention. The dorm officer checked on Decedent and immediately called for medical attention. While waiting for medical to arrive, officers came to the dorm and had to make an additional call for medical help. Decedent informed the officers that he could not breathe. After the second call, medical personnel arrived with a wheelchair and took Decedent to the infirmary.

19. Later in the evening of **June 7, 2019**, after multiple complaints by Decedent related to shortness of breath and inability to breath, he was finally taken to the University of Texas Medical Branch-Angleton Danbury Campus. *Upon arrival, Decedent was noted to be acutely ill with multi-organ system failure and was transferred to the University of Texas Medical Branch-Galveston the following day, June 8, 2019. Upon arrival at University of Texas Medical Branch-Galveston, Decedent was found to be in septic shock, and his blood cultures were positive for Staphylococcus aureus infection. Decedent expired only hours later of sepsis due to the extent of the infection in his body.*

20. The autopsy performed on Decedent revealed that, in addition to the Staphylococcus aureus infection, Decedent suffered petechial hemorrhages involving all major organs, congested and abscessed lungs, ischemic changes to his liver as a result of insufficient blood flow, congestive splenomegaly, and vascular congestion. The mucosa of his colon were noted to be necrotic caused by hypotension due to septic shock. Exam of Decedent's brain revealed moderate cerebral edema and acute ischemic encephalomalacia, known to be the most serious type of brain injury that results in softening of the brain's tissue due to hemorrhage and/or inflammation. An abscess had formed

in Decedent's right psoas muscle, which likely caused his severe back pain. The pathologist determined that due to the systemic infection, Decedent went into septic shock with multiorgan failure, including edematous lungs, leading to his death. Plaintiff's injuries and damages are a direct result of Defendants' neglect.

21. Each of these medical conditions not only caused Decedent's untimely death, but were also conditions that could have been – and should have been – discovered and treated by medical and non-medical personnel within the Texas Department of Criminal Justice system in connection with the University of Texas Medical Branch-Correctional Managed Care. Decedent requested on multiple occasions to be treated for his illness and also requested to be taken to the hospital for treatment. However, due to the failures and neglect of medical and non-medical (TDCJ) personnel, Nwafor and Mbugua failed to recognize the severity of infection from which Decedent was suffering, and the lack of oversight and supervision by the University of Texas Medical Branch-Correctional Managed Care, Texas Department of Criminal Justice, and Warden Armstrong, Decedent was refused timely, necessary, and adequate medical care that could have saved his life.

22. Each of these Defendants collectively deprived Decedent of necessary medical care and attention that resulted in his pain, suffering, and untimely death. Additionally, each were acting under the color of law and are liable pursuant to the Eighth Amendment of the Constitution of the United States and pursuant to 42 U.S.C. §1983. Defendants' acts and omissions caused Decedent to suffer cruel and unusual punishment in the days and months leading up to his death, in violation of the Eighth Amendment of the Constitution of the United States.

23. Due to the untimely death of her father while under the care of the State of Texas and its employees and/or representatives. Plaintiff brings this suit for the causes of action and damages as outlined below.

**VI.**  
**CAUSES OF ACTION**

**A. NEGLIGENCE OF DEFENDANT TEXAS DEPARTMENT OF CRIMINAL JUSTICE (“TDCJ”)**

24. Plaintiff hereby incorporates all Paragraphs of Section V above, as if set forth in this space.
25. The acts, omissions, and failures of Defendant Texas Department of Criminal Justice on the occasions in question were unreasonable and were the proximate and producing causes of the injuries and untimely death of Decedent and the damages suffered by Plaintiff. This Defendant is liable to Plaintiff pursuant to the Eighth Amendment of the Constitution and pursuant to 42 U.S.C. §1983 for acting with deliberate indifference to the extent of Decedent’s illness and/or infection which occurred due to their lack of oversight and management of personnel at the Darrington Unit. Their failures allowed for the neglect of Decedent, specifically his much needed medical care and attention.
26. Each such act, omission, and/or failure of Defendant Texas Department of Criminal Justice, singularly or in combination with others, constituted negligence which proximately caused the death of Decedent and Plaintiff’s injuries and damages. Plaintiff reserves the right to plead more specifically as facts become more fully known in discovery.

**B. NEGLIGENCE OF DEFENDANT ARMSTRONG**

27. Plaintiff hereby incorporates all Paragraphs of Section V above, as if set forth in this space.
28. The acts, omissions, and failures of Defendant Armstrong on the occasions in question were unreasonable and were the proximate and producing causes of the injuries and untimely death of Decedent and the damages suffered by Plaintiff. Defendant Armstrong is liable to Plaintiff for violating Defendant’s Eighth Amendment rights and is liable pursuant to 42 U.S.C. §1983 for acting with deliberate indifference to the extent of Decedent’s illness and/or infection which occurred due to his lack of oversight and management of the employees of the state-operated

establishment over which he had control. His failures allowed for the neglect of Decedent on multiple occasions, the failure to recognize Decedent's need for adequate and timely medical care and attention, and Decedent's decline and ultimate death.

29. Each such act, omission, and/or failure of Defendant Armstrong, singularly or in combination with others, constituted negligence which proximately caused the death of Decedent and Plaintiff's injuries and damages. Plaintiff reserves the right to plead more specifically as facts become more fully known in discovery.

**C. NEGLIGENCE AND DELIBERATE INDIFFERENCE OF DEFENDANTS NWAFOR AND MBUGUA**

30. Plaintiff hereby incorporates all Paragraphs of Section V above, as if set forth in this space.

31. The acts, omissions, and failures of Defendants Nwafor and Mbugua on the occasions in question were unreasonable and were proximate and producing causes of the injuries and untimely death of Decedent and the damages suffered by Plaintiff. Defendants Nwafor and Mbugua are liable to Plaintiff for violating Defendant's Eighth Amendment rights and are liable pursuant to 42 U.S.C. §1983 for acting with deliberate indifference to the extent of Decedent's illness and/or infection which caused Decedent's untimely death. Their failures deprived Decedent of vital medical care and attention necessary to prevent the spread of infection, sepsis throughout the body, breakdown of vital organs, hemorrhaging, brain damage, and ultimate death.

32. Each such act, omission, and/or failure of Defendants Nwafor and Mbugua, singularly or in combination with others, also constituted negligence which proximately caused the death of Decedent and Plaintiff's injuries and damages. Plaintiff pleads state claims of wrongful death and survival pursuant to Chapter 71 of the Texas Civil Practice & Remedies Code. Plaintiff reserves the right to plead more specifically as facts become more fully known in discovery.

**D. RESPONDEAT SUPERIOR: TEXAS DEPARTMENT OF CRIMINAL JUSTICE AND UNIVERSITY OF TEXAS MEDICAL BRANCH-CORRECTIONAL MANAGED CARE**

33. Plaintiff hereby incorporates all Paragraphs of Section V above, as if set forth in this space.
34. At all times relevant hereto, Defendants Nwafor and Mbugua were acting in the course and scope of their employment with Defendant University of Texas Medical Branch-Correctional Managed Care.
35. At all times relevant hereto, all TDCJ employees of the Darrington Unit were acting within the course and scope of their employment with Texas Department of Criminal Justice.

**E. NEGLIGENCE AND NEGLIGENCE *PER SE* OF DEFENDANT UNIVERSITY OF TEXAS MEDICAL BRANCH-CORRECTIONAL MANAGED CARE**

36. Plaintiff hereby incorporates all Paragraphs of Section V above, as if set forth in this space.
37. Plaintiff would show that Defendant University of Texas Medical Branch-Correctional Managed Care was negligent and negligent *per se* at all times of Decedent's time at Darrington Unit and subsequent death. Plaintiff would show that Defendants Nwafor and Mbugua were agents, servants, and/or employees of the University of Texas Medical Branch-Correctional Managed Care and also, by contract agents of TDCJ, were acting within the course and scope of their employment as agents, servants, and/or employees when the acts and omissions that caused the death made the basis of this suit occurred. As such, Defendant University of Texas Medical Branch-Correctional Managed Care is liable for the negligence and negligence *per se* of Defendants Nwafor and Mbugua under the theory of *respondeat superior*.

**F. NEGLIGENT HIRING, RETENTION, SUPERVISION, AND TRAINING OF DEFENDANT UNIVERSITY OF TEXAS MEDICAL BRANCH-CORRECTIONAL MANAGED CARE**

38. Plaintiff hereby incorporates all Paragraphs of Section V above, as if set forth in this space.
39. Plaintiff would show that Defendant University of Texas Medical Branch-Correctional Managed Care was also independently negligent in one or more of the following respects:

- a. negligent hiring;
- b. negligent employee qualifications;
- c. negligent training;
- d. negligent supervision and monitoring of Defendants Nwafor and Mbugua;
- e. negligent retention;
- f. negligent contracting;
- g. Defendant failed to have an adequate program and/or protocol in place to ensure that effective ongoing monitoring and training of its medical personnel occurred; and
- h. Defendant placed medical personnel in the Darrington Unit facility knowing that the personnel were incompetent and that such incompetence could in all likelihood cause serious injury to others in the event of a health emergency such as that which occurred to Decedent.

**G. NEGLIGENCE *PER SE* OF DEFENDANT TEXAS DEPARTMENT OF CRIMINAL JUSTICE**

40. Plaintiff hereby incorporates all Paragraphs of Section IV above, as if set forth in this space.

41. Plaintiff would show that Defendant Texas Department of Criminal Justice was negligent and negligent *per se* at all times of Decedent's time at Darrington Unit and subsequent death. Further, Plaintiff would show that Armstrong and all TDCJ employees were agents, servants, and/or employees of Defendant Texas Department of Criminal Justice, and were acting within the course and scope of their employment as agents, servants, and/or employees when the incidents and subsequent death made the basis of this suit occurred. As such, Defendant Texas Department of Criminal Justice is liable for the negligence and negligence *per se* of Defendants Armstrong and all TDCJ employees under the theory of *respondeat superior*.

**H. NEGLIGENT HIRING, RETENTION, SUPERVISION, AND TRAINING OF DEFENDANT TEXAS DEPARTMENT OF CRIMINAL JUSTICE**

42. Plaintiff hereby incorporates all Paragraphs of Section V above, as if set forth in this space.

43. Plaintiff would show that Defendant Texas Department of Criminal Justice was also independently negligent in one or more of the following respects:

- a. negligent hiring;
- b. negligent employee qualifications;
- c. negligent training;
- d. negligent supervision and monitoring of Defendant Armstrong and other officers whose acts or omissions caused Decedent's untimely death;

- e. negligent retention;
- f. negligent contracting;
- g. Defendant failed to have an adequate program and/or protocol in place to ensure that effective ongoing monitoring and training of its personnel occurred; and
- h. Defendant placed personnel in the Darrington Unit facility knowing that the personnel were incompetent and that such incompetence could in all likelihood cause serious injury to others in the event of a health emergency such as that which occurred to Decedent.

## **I. GROSS NEGLIGENCE**

44. Plaintiff hereby incorporates all Paragraphs of Section V above, as if set forth in this space.

45. Defendants acted recklessly and with wanton disregard for the health and safety of Decedent. Plaintiff is entitled to exemplary damages in accordance with the Chapter 41 of the Texas Civil Practice & Remedies Code. Accordingly, Plaintiff pleads for exemplary damages at the maximum amount allowed by law and as the trier of fact shall deem appropriate.

46. The acts and omissions of Defendants Armstrong, Nwafor, Mbugua, Texas Department of Criminal Justice, and Texas Medical Branch-Correctional Managed Care as set forth above were of such a character as to make each such Defendant guilty of malice and gross negligence. The conduct of Defendants, viewed objectively from the standpoint of the Defendants at the time of the occurrences, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others; and of which those Defendants had actual, subjective awareness of the risk involved, but nevertheless proceeded with conscious indifference to the rights, safety, and welfare of Decedent and others similarly situated. Plaintiff seeks exemplary damages in such an amount as may be found to be proper under the facts and circumstances.

## **VII.** **DAMAGES**

### **A. ESTATE OF EUGENIO ESPINOZA MARTINEZ, DECEASED**

47. Plaintiff hereby incorporates all Paragraphs of Sections V and VI above, as if set forth in this space.

48. Plaintiff seeks all damages recoverable by law, including but not limited to recoverable damages allowed by the Texas survival cause of action, including but not limited to:

- a. physical pain and suffering of Martinez prior to his death;
- b. mental anguish of Martinez prior to his death; and
- c. funeral and burial expenses.

**B. KALEEYSE MARTINEZ, INDIVIDUALLY**

49. Plaintiff hereby incorporates all Paragraphs of Sections V and VI above, as if set forth in this space.

50. Plaintiff seeks all damages recoverable by law. Plaintiff seeks to recover for loss of society of Decedent and seeks to recover for the broad range of mutual benefits she would have received from her father had he lived, including love, affection, care, attention, companionship, comfort and protection. Plaintiff also seeks to recover wrongful death damages, including but not limited to:

- a. pecuniary loss;
- b. loss of support;
- c. loss of advice and counsel;
- d. loss of services;
- e. past and future mental anguish;
- f. loss of companionship and society; and
- g. for such other relief, both legal and equitable, to which she may be entitled.

**VIII.**  
**PUNITIVE DAMAGES**

51. Plaintiff hereby incorporates all Paragraphs of Sections V, VI, and VII above, as if set forth in this space.

52. Plaintiff seeks recovery of exemplary damages under TEX. CIV. PRAC. & REM. CODE §71.009 for Defendants' willful acts or omissions and/or gross negligence in causing the death of Decedent. Plaintiff seeks to recover the damages that Decedent could have instituted suit to recover, but for his untimely death.

**IX.**  
**TEX. R. CIV. P. 47(C) NOTICE**

53. Pursuant to Texas Rule of Civil Procedure 47(c), Plaintiff seeks monetary relief in excess of \$1,000,000. As discovery in this matter has not yet commenced, Plaintiff cannot reliably state a maximum amount of damages sought at this time and reserves the right to supplement in accordance with the Texas Rules of Civil Procedure.

**X.**  
**ATTORNEYS' FEES**

54. Plaintiff hereby incorporates all Paragraphs of Section V above, as if set forth in this space.

55. Plaintiff has been required to retain the services of attorneys to represent her in this complex and difficult proceeding and cause of action. Plaintiff has retained the undersigned attorneys to represent her and, pursuant to the Eighth Amendment of the Constitution of the United States and pursuant to 42 U.S.C. 1988(b) of the Federal Civil Rights Act, she is entitled to recover her reasonable and necessary fees incurred for these attorneys, and the reasonable and necessary expenses incurred in the pursuit of this claim at the trial level, the Court of Appeals level if the case is appealed to that Court, and the Supreme Court of the United States, if necessary.

**XI.**  
**RULE 193.7 NOTICE**

56. Pursuant to Rule 193.7 of the Texas Rules of Civil Procedure, Plaintiff hereby provides notice to all parties in this case that she intends to use documents produced in response to any written discovery by any party to this cause as authenticated and will be used for any purpose allowed by Rule 193.7.

**XII.**  
**JURY DEMAND**

57. Plaintiff respectfully demands a trial by jury, the fee for which is tendered herewith.

**XIII.**  
**INITIAL DISCLOSURES**

58. Pursuant to Texas Rule of Civil Procedure 194.1(a), Defendants must disclose, within thirty (30) days of the filing of their Answer or general appearance, the information and materials described in 194.2, 194.3, and 194.4 of the Texas Rules of Civil Procedure, as amended.

**XIV.**  
**PRAYER FOR RELIEF**

WHEREFORE, PREMISES CONSIDERED, Plaintiff KALEEYSE MARTINEZ, Individually and as Representative of the Estate of EUGENIO ESPINOZA MARTINEZ, Deceased, prays for judgment against all Defendants for the following:

- a. Actual damages;
- b. Exemplary damages as allowed by law;
- c. Past and future loss of enjoyment of life;
- d. Past and future pain and suffering and mental anguish;
- e. Wrongful death damages;
- f. Pecuniary loss;
- g. Loss of support;
- h. Loss of advice and counsel;
- i. Loss of services;
- j. Loss of companionship and society;
- k. Past and future loss of consortium
- l. Past and future mental anguish;
- m. Pre- and Post-Judgment Interest on damages;
- n. Attorneys' fees;
- o. Costs of court; and
- p. All such other and further relief, either at law or in equity, to which Plaintiff may be justly entitled.

Respectfully submitted,

ENGVALL & YORK, LLP

By: 

JOHN ENGVALL, JR.

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CHRISTINE N. YORK

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ATTORNEYS FOR PLAINTIFF